

STATE OF COLORADO

Department of State

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Mike Coffman

Secretary of State

William A. Hobbs

Deputy Secretary of State

December 31, 2007

Chantell Taylor, Esq.
Director, Ethics Watch
(formerly, Colorado Citizens for Ethics in Government)
1630 Welton Street, Suite 415
Denver, CO 80202

Scott E. Gessler, Esq.
Hackstaff Gessler LLC
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Denver, CO 80202

Re: CCEG complaint against Colorado Cab under lobbying regulation law

Dear Ms. Taylor and Mr. Gessler:

The Secretary of State's Office has completed its investigation into the complaint submitted by Colorado Citizens for Ethics in Government ("CCEG", now known as "Ethics Watch"), concerning whether Colorado Cab violated § 24-6-307, C.R.S., concerning the employment of unregistered cab drivers to engage in lobbying, and whether cab drivers violated § 24-6-302 and § 24-6-303 by failing to register and report as professional lobbyists. Based on the results of that investigation, and for the reasons more fully explained below, the Secretary of State has decided to dismiss the complaint and take no further action.

Background

On July 3, 2007, the Secretary of State notified the parties by letter that the Office would conduct an investigation pursuant to § 24-6-305(2)(c), C.R.S., to determine:

1. Whether Colorado Cab violated § 24-6-307, C.R.S., concerning the employment of unregistered persons to engage in lobbying, and
2. Whether Colorado Cab drivers violated § 24-6-302 and § 24-6-303 by failing to register and report as professional lobbyists.

The letter further stated that the Office would assign an investigator, who would begin the investigation by interviewing CCEG and the cab drivers identified by CCEG. The letter stated that records created or collected during the Secretary's investigation, including investigator's notes and any affidavits of cab drivers that may be provided by CCEG, would be treated by the Secretary of State as confidential under § 24-72-204 (2) (a) (I) of the Colorado Open Records

Act, which permits a custodian of records to deny public inspection of investigatory files compiled for law enforcement purpose.¹

Investigation

The Office assigned a Compliance Investigator from the Office's Division of Licensing and Enforcement to conduct the investigation. During the course of his investigation, the investigator made numerous, unsuccessful attempts to identify, locate, and interview witnesses who might confirm the allegations of the complaint. For example:

- Ms. Taylor initially informed the investigator by phone that she had names and phone numbers of persons who would cooperate with the investigation. However, when the investigator later met with Ms. Taylor at her office, she informed the investigator that those persons had withdrawn their names.
- Ms. Taylor gave the investigator the phone number for Mengisteab Abraha Desta, whose affidavit was attached to CCEG's complaint. Ms. Taylor indicated that Mr. Desta might be able to supply more contacts. When the investigator was finally able to meet with Mr. Desta, after numerous unsuccessful efforts to schedule an interview, Mr. Desta stated that he could not identify any driver who had been offered compensation, that he did not know if any driver had actually received any compensation, and that he did not receive any compensation himself for lobbying.
- Ms. Taylor provided two other contacts who might have relevant information. The investigator interviewed Mr. Abdi Buni, who represented a union of taxicab drivers who own their own cars, but Mr. Buni could not provide any first-hand information and advised the investigator that he knew of no drivers who were interested in speaking with the investigator. The other contact was Mr. Eric Groves, who Ms. Taylor identified as an attorney who was assisting Mr. Buni with legislative information. Ms. Taylor had indicated that Mr. Groves might not be able to provide any additional information, and Mr. Groves did not return the investigator's phone call.
- At the suggestion of Mr. Buni, the investigator went to the airport in an attempt to find a cab driver with relevant knowledge who would be willing to talk. However, there was no driver who was either willing to talk or had knowledge of the events.

Analysis

Based on the investigator's report, the evidence as to whether there has been a violation of the lobbyist regulations laws is mostly limited to two conflicting affidavits:

- The affidavit of cab driver Desta. Mr. Desta's affidavit states that he and other cab drivers were offered a lease adjustment by Michael Rivera, Director of Driver Relations for Yellow Cab (Colorado Cab), if they would contact legislators and ask them to oppose H.B. 07-1114. However, the affidavit does not claim that Mr. Desta or any other cab driver accepted the offer.

¹ The investigator's report is attached to this letter and will be publicly released with this letter, as it contains no information provided to the investigator of a confidential nature. For example, the investigator was unable to obtain any affidavits of cab drivers other than the affidavit that was attached to CCEG's complaint (which was already public). The investigator's notes and other records created or collected during the investigation will be treated as confidential under § 24-72-204 (2) 9a) (I), C.R.S.

- The affidavit of Michael Rivera of Colorado Cab. Mr. Rivera's affidavit contradicts Mr. Desta's affidavit and states that neither he nor any employee of Colorado Cab ever offered compensation to any cab driver to call legislators.

In the July 3 letter, this Office explained that, in order to establish that Colorado Cab violated § 24-6-307, C.R.S., by employing unregistered persons to engage in lobbying, or that cab drivers violated § 24-6-302 and § 24-6-303 by failing to register and report as professional lobbyists, it would be necessary to show that there was both an offer of compensation by Colorado Cab and an acceptance of that offer by one or more cab drivers.

The two affidavits are conflicting as to whether there was even an offer of compensation. However, even Mr. Desta's affidavit does not state that he or any cab driver accepted an offer of compensation. Furthermore, despite numerous efforts, the investigator was unable to find any evidence that a cab driver actually accepted an offer of compensation to lobby. Every witness interviewed was unable to identify any driver who had accepted an offer of compensation to lobby.

Conclusion

The lobbyist regulation law provides that there is a violation only if there is both an offer of compensation to engage in lobbying and an acceptance of that offer by an unregistered person. There is conflicting evidence whether Colorado Cab made an offer to any cab driver to engage in lobbying for compensation. However, our investigator was unable to find any evidence that any cab driver accepted an offer to engage in lobbying for compensation, despite numerous and extensive efforts on the part of our investigator to obtain such evidence, and despite an offer of confidentiality available to potential witnesses.

Thus, based on the investigation, there is no evidence to support the complaint that Colorado Cab violated § 24-6-307, C.R.S., by employing unregistered cab drivers to engage in lobbying, or that cab drivers violated § 24-6-302 and § 24-6-303 by failing to register and report as professional lobbyists.

Accordingly, the complaint is dismissed, and the Office will take no further action in this matter.

Respectfully,



William A. Hobbs
Deputy Secretary of State

Attachment: Investigation Report dated December 19, 2007

STATE OF COLORADO

Department of State

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Mike Coffman

Secretary of State

Andrew Whitfield

Acting Director, Licensing & Enforcement Division

REPORT DATE

December 19, 2007

TYPE OF REPORT

Disposition of Investigation
Into Alleged Illegal Lobby Activities
By Colorado Cab Company

REPORT BY

Lawrence Runn

CASE ALLEGATIONS AND BACKGROUND: On January 15, 2007, House Bill 07-1114 was introduced in the House calling for the deregulation of lease rates for taxicabs in Colorado. HB 07-1114 was assigned to the House Committee on Transportation & Energy, and testimony was heard by the committee on March 1, 2007. Over four hours of testimony was given. Most of the owners and operators of the various taxicab companies that operate in the state, including Colorado Cab Company, testified against the bill.

On March 28, 2007, Mr. Mengisteab Abraha Desta, a taxicab driver, stated in a sworn affidavit that he was offered a "lease adjustment" in exchange for calling legislators in opposition to the bill. He stated that he "understood this to mean Yellow Cab was offering...compensation in exchange for calling legislators on HB 1114 to ask them to oppose the bill (Desta Aff. 1)." This offer for compensation in exchange for calling legislators occurred the day before the House Committee on Transportation & Energy was to vote on the bill.

On March 29, 2007, the Rocky Mountain News reported on the affidavit by Mr. Desta. On April 3, 2007, Chantell Taylor, Director of Colorado Citizens for Ethics in Government (CCEG), filed a request with the Colorado Secretary of State asking for an investigation of the Colorado Cab Company (CCC) for violations of Title 24, Article 6, Part 3 of Colorado Statutes regulating lobbyists within Colorado.

On July 3, 2007, after review of the evidence given by CCEG, and a response by attorney Scott Gessler on behalf of the Colorado Cab Company, the Secretary of State determined that the office would undertake an investigation to determine if CCC violated § 24-6-307, C.R.S., concerning the employment of unregistered persons to engage in lobbying, and whether Colorado Cab drivers violated § 24-6-302, C.R.S., and § 24-6-303 C.R.S., by failing to register and report and professional lobbyists.

INVESTIGATION: Lawrence Runn, Compliance Investigator for the Secretary of State, was given the case on July 9, 2007. Investigator Runn reviewed all of the exhibits offered by the CCEG, as well as an affidavit by Michael Rivera, supervisor for the CCC, and the response by

Scott Gessler. Investigator Runn also reviewed all pertaining statutes in question, including lobby and lobbyist definitions within the given statutes and House and Senate Rules.

It had been acknowledged that interviewing taxicab drivers might be difficult, since they could be found liable if the allegations were proven to be true. If the allegations were true, the drivers would likely be in violation of § 24-6-302 and § 24-6-303 by failing to register and report as professional lobbyists.

After careful review of the evidence, Investigator Runn contacted Chantell Taylor to obtain information regarding the allegation. On the telephone, she told Investigator Runn that she had names and phone numbers of a few persons who would cooperate with this office for the purposes of this investigation. She had previously made that statement in a letter to the Secretary on April 11, 2007. In that letter she indicated that there were cab drivers willing to talk under the shield of anonymity, which was granted in a letter from Deputy Secretary William Hobbs on July 3, 2007. Investigator Runn met with Ms. Taylor at her office on July 18, 2007. Ms. Taylor explained that the persons whom she felt would have cooperated with this office had withdrawn their names. She gave Investigator Runn the phone number for Mr. Desta, and indicated that he might be able to supply more contacts. Ms. Taylor also gave Investigator Runn the contact information for the Mr. Abdi Buni, who represents a union of taxicab drivers who own their own cars. She also gave Investigator Runn the contact information of Mr. Eric Groves, an attorney who was assisting Mr. Buni with legislative information.

Before making contact with any of the persons with knowledge of the alleged violation, Investigator Runn made copies of the verbal testimony given to the House Committee on Transportation & Energy regarding HB 1114. This was conducted to expand the search for possible persons of interest to interview. Out of the four hours of testimony the House librarian was able to capture only one hour. This one hour of testimony contained statements from those persons who were testifying against the bill. This included representatives of the cab companies and not the drivers themselves. Therefore the testimony did not yield any persons who might be interested in speaking with Investigator Runn.

Investigator Runn made contact via telephone with Mr. Desta on or about August 1, 2007. A meeting time was scheduled on or about August 9, 2007. Mr. Desta did not show for that meeting. Investigator Runn made contact via telephone again on or about August 10, 2007. A meeting time was reset on or about August 16, 2007. Mr. Desta did not show for that meeting. Investigator Runn made contact via telephone for a third time with Mr. Desta on or about August 17, 2007. A third meeting time was scheduled on or about August 23, 2007. A previously scheduled appointment conflicted with this date, and Investigator Runn called Mr. Desta to reschedule. At that time Mr. Desta indicated that he was not able to come into the office for that third appointment, and that he would call to make arrangements for another time. A phone call was made to Mr. Desta on or about August 27, 2007, and a voice message was left for him to call Investigator Runn. A second telephone call was made on or about September 4, 2007, and a voice mail message was left for him to call. A third telephone call was attempted on or about September 11, 2007, and another voice mail message was left for Mr. Desta to call.

After the presentation of the initial report regarding this issue, Investigator Runn attempted one more time to contact Mr. Desta, and was able to make a connection. On or about September 27 Investigator Runn met with Mr. Desta in his hotel suite. He had been the victim of a house fire that burned his arms and legs, and was in the hospital during the time Investigator Runn was

attempting to reach him. Mr. Desta told Investigator Runn that the affidavit he had signed was accurate. He said that the cab drivers felt pressured into making the phone calls, and that there was a threat of loss of employment if they did not comply. When asked why there was a threat of retaliation as well as an incentive program at the same time, Mr. Desta could not answer. Mr. Desta said that Mr. Mike Rivera had been the supervisor who had approached him about making the phone calls. Mr. Desta did not make the phone calls and said that others had, although he said that many did not call the committee members. Instead the cab drivers made calls to friends and relatives to make it appear that they were calling the representatives.

When asked about the lease adjustments, Mr. Desta could only confirm what was in the affidavit. Within his affidavit Mr. Desta stated that Mr. Rivera had approached him, and others, about making phone calls to a list of legislators in opposition to H.B. 07-1114. It was his understanding that there was to be a lease adjustment in exchange for making these phone calls. A lease adjustment is the lowering of a cab driver's lease rate. An adjustment for making these phone calls would be considered compensation. He did not know whether the cab drivers that were making the phone calls were doing so because of the offer of an adjustment or due to intimidation over job security. He also did not know if anyone received an adjustment. Mr. Desta stated that the supervisors had great latitude as to how and why adjustments were made. He continued by saying that he did not think that the supervisors had any written policy and procedure to follow when granting these adjustments. If someone were to look at the lease records there would be no way to discern why an adjustment was made.

Mr. Desta continued to complain about working conditions with Yellow Cab. When asked to provide additional names and phone numbers of cab drivers who had been approached by the Yellow Cab supervisors, Mr. Desta was unable to do so. He stated that the Pro Taxi union president, Abdi Buni, was the person with that information.

On October 1, 2007, Investigator Runn met with Mr. Abdi Buni to gather additional names and phone numbers of cab drivers who had been approached about making these phone calls. Mr. Buni said that the phone calls were made in the offices of Yellow Cab during the driver's hours. When asked about the coercion factor, Mr. Buni agreed with Mr. Desta that there appeared to be an intimidation component involved, but that part was always present for the drivers, not just at this time. Intimidation appears to be a factor behind a lot of management decisions and drivers willingness to acquiesce. In the complaint filed by Ms. Taylor on March 30, 2007, she includes an article from the Rocky Mountain News dated March 2, 2007 that speaks to the testimony given the previous day. Within that testimony there are several persons who spoke about the intimidation factor, which included alleged mental and physical abuse.

Mr. Buni is not a driver for Yellow Cab, and was not approached about making these calls. He could not provide any first-hand information. In addition to this, the only driver's name that he could provide was that of an ex-cab driver by the nickname "Haba." Mr. Buni did not know the drivers full name. He told me that all other drivers were not interested in speaking with me about this issue due to the ever-present threat of job security. Mr. Buni suggested that a visit to the airport might reveal some drivers who would be willing to talk.

A couple of phone calls were placed to "Haba". He was not there on the first attempt, and a message was left with the person who had answered the phone call. A second phone call was met with a denial of knowledge of anyone by the name "Haba".

On October 30 Investigator Runn went to the airport in an attempt to find a Yellow Cab driver who would be willing to talk. There was no driver who was either willing to talk, or had knowledge of the events.

Mr. Rivera stated in his affidavit that Mr. Desta had volunteered to make phone calls on behalf of the cab company, and that others came forward to make calls as well. He stated that no one was forced to make these phone calls, and that no offer of compensation was ever made to anyone in exchange for making these phone calls. Mr. Rivera continues by explaining lease adjustments and why they are used, and states that no adjustments were made to any lease for having made phone calls.

Investigator Runn interviewed Scott Gessler by phone, who simply reiterated the information given by Mr. Rivera in his own affidavit. A meeting with Mr. Rivera was made available, but Investigator Runn declined. It was determined that a meeting with Mr. Rivera was not necessary, as no additional information was forthcoming from all other sources Investigator Runn let the testimony of Mr. Gessler stand in proxy for Mr. Rivera.

A call had been placed on or about October 29, 2007, with Mr. Eric Groves of Zakhem Atherton, LLC, but was not returned. Ms. Taylor provided Mr. Groves' name and phone number as an interested party in this case, but she did give the caveat that Mr. Groves might not be able to provide any additional information. He has been involved with the Pro Taxi union, and was brought into the investigation due to his involvement with Mr. Buni.

CONCLUSION: The purpose of this investigation was to determine whether (1) Colorado Cab violated § 24-6-307, C.R.S., concerning the employment of unregistered persons to engage in lobbying and if so to determine whether (2) Colorado Cab drivers violated § 24-6-302, C.R.S., and § 24-6-303, C.R.S., by failing to register and report as professional lobbyist.

Violation of § 24-6-307, C.R.S.

Pursuant to section § 24-6-307, C.R.S., unregistered persons are not permitted to engage in lobbying. The threshold determination is whether there has been an offer of consideration for lobbying. A mere offer to pay an unregistered person to engage in lobbying is insufficient to establish a violation, because a mere offer does not constitute (a) employment, (b) actual payment, or (c) an agreement. For there to be an agreement, there must be an acceptance. Thus, for a person to be found liable for violating this statute, there must be an offer to engage in lobbying and that offer must be accepted by either unilaterally engaging in lobbying or agreeing to engage in lobbying.

The SOS's investigation found no conclusive evidence that there was both an offer and acceptance to perform lobbying actions by the cab drivers on behalf of Colorado Cab Company.

The outcome of this investigation hinged primarily on the information that was provided by Mr. Desta. His affidavit was the starting point of the complaint. The affidavits of Mr. Desta and Mr. Rivera contradict each other. The main difference between the two is that Mr. Desta makes inferences as to the meaning of Mr. Rivera's alleged offer, whereas Mr. Rivera states that no offer of compensation was made.

Ms. Taylor indicated in her letter to the Secretary on April 11, 2007, that "CCEG has learned that additional Yellow Cab drivers are willing to submit written affidavits, but only if their identities remain confidential..." The request for anonymity was addressed in Mr. Hobbs' letter dated July 3, 2007, granting confidentiality of the records under § 24-72-204(2)(a)(I), C.R.S., of the Colorado Open Records Act. During the initial contact with Ms. Taylor, it was established that the drivers had rescinded their initial willingness to come forward.

Ms. Taylor then claimed that Mr. Desta had the names of other taxicab drivers who were interested in coming forward with evidence concerning this complaint. Mr. Desta could not provide any names, but pointed towards Mr. Buni as the provider of names. Mr. Buni was unable to give more than one name, and that was only a nickname. That person could not be found for an interview. No other cab drivers were found who were knowledgeable of the issues or willing to talk about the phone calls.

Throughout the investigation it became clear that the drivers work under duress, and that their jobs are continually on the line for one reason or another. The hours are long and the lease rates are high. Intimidation and coercion appear to be the prime motivating factors for those who choose to drive cabs. This working atmosphere alone might be enough to coerce drivers into doing whatever their supervisors tell them to do. It does not make sense that an additional layer of coercion in the form of an incentive is added to the mix.

In order to prove that the CCC violated Colorado lobbying laws, it was necessary to show that the cab drivers were offered some consideration, most likely in the form of some lease adjustment, and that the cab drivers accepted that offer. During the course of this investigation only one cab driver, Mr. Desta, was willing to talk about the allegations. Through his affidavit and the interview it has been made known that he might have been offered consideration for making phone calls. He has also stated that he did not accept that offer. Because no other cab drivers have been willing to come forward, there is no evidence that any offer on the part of CCC was accepted by any cab driver.

Violation of § 24-6-302, C.R.S., and § 24-6-303, C.R.S.

Pursuant to Colorado law, a professional lobbyist is required to register with the secretary of state before engaging in lobbying. § 24-6-303, C.R.S. Accordingly, a professional lobbyist is required file disclosure statements of expenditures with the secretary of state. § 24-6-302(2.5), C.R.S.

Cab drivers are not professional lobbyist and thus are not required to register with the secretary of state or file disclosure statements.

For their part, the threshold determination of whether cab drivers can be considered professional lobbyists hinges upon whether the CCC made an offer which was accepted by the drivers. As the SOS's investigation has revealed no conclusive evidence that this occurred, cab drivers are not bound by § 24-6-302(2.5), C.R.S., or § 24-6-303, C.R.S.

In conclusion, the first issue was never proven because no evidence was found to substantiate the claim that both an offer and acceptance was ever made. The second issue falls under the weight of the first because the statutes cited apply to professional lobbyists. The claim of a violation of lobbying laws remains unproven.